

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**MARC GRANO as personal representative §
of the WRONGFUL DEATH ESTATE §
OF JONATHAN ANDREW GARCIA §
and a Next Friend to J.O.G., A.S.R., An.J.G §
and Ar.J.G §**

Plaintiff, §

v. §

**§
Case No. 1:20-cv-00147-PJK-KK**

**STATE OF NEW MEXICO, GREGG §
MARCANTEL, New Mexico Secretary of §
Corrections, DAVID JABLONSKI, New §
Mexico Secretary of Corrections, §
CLARENCE OLIVAS, Deputy Warden §
Of Penitentiary of New Mexico, BRIAN §
LUCERO, Corrections Officer, FNU §
MARTINEZ, Corrections Officer, FNU §
BACA, Captain, Corrections Officer, FNU §
WELLS, Sergeant, Corrections Officer, and §
JOHN DOES 1 through 5, employees, §
staff, agents of Penitentiary of New Mexico, §**

Defendants. §

AFFIDAVIT OF BRIAN FITZGERALD

I, Brian Fitzgerald, Esq., state under oath that I am over the age of 18 years and have personal knowledge of the facts which are true and correct, as stated below:

1. I serve as Chief Deputy General Counsel for the New Mexico Corrections Department (“NMCD”).
2. Part of my duties as Chief Deputy General Counsel requires my review of NMCD’s responses to discovery requests for litigation matters involving NMCD.

3. In this case, although NMCD is not directly named as a defendant, the claims against the State of New Mexico arise from allegations made concerning the employees of the NMCD.
4. Plaintiff Marc Grano is the Personal Representative of the Wrongful Death Estate of Jonathon Andrew Garcia.
5. Jonathon Andrew Garcia, DOB 01/28/1987, was assigned inmate number 77394 by NMCD, and was incarcerated during the times material to the allegations made in the Complaint.
6. Mr. Garcia died while he was a NMCD inmate. The circumstances giving rise to his death form the basis of the Complaint.
7. Plaintiff served Requests for Production in his written discovery requests, which were served on September 21, 2021, and to which decedent, Jonathon Andrew Garcia's, NMCD No. 77394's "Inmate File" is responsive. In its *Clerk's Minutes* entered January 28, 2022 [doc. 94], the Court ordered production of Jonathon Andrew Garcia's, NMCD No. 77394's "Inmate File" by January 31, 2022.
8. NMCD has performed a thorough and diligent search for the Jonathon Andrew Garcia's, NMCD No. 77394's "Inmate File." However, only portions of it have been located.
9. NMCD Inmate Files contain six sections and multiple subsections, which are noted in NMCD Policy No. CD-040101.A, which attached as Exhibit A hereto for the Court's reference.
10. Only portions of Jonathon Andrew Garcia's, NMCD No. 77394's "Inmate File" could be located for production in response to Plaintiff's written discovery. The "Intake Pack," which contains various documents of the categories in NMCD Policy No. CD-040101.A,

